IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3264 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAMBHUSINH P CHAVDA

Versus

CHAIRMAN

Appearance:

MR HJ NANAVATI for Petitioner

MR SM MAZGAONKAR for Respondent No.1 & 2

MR SK PATEL for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/10/1999

ORAL JUDGEMENT

#. The petitioner, a higher secondary teacher with respondent No.1 and 2 by this writ petition, challenges the order dated 29th August 1982 of the Gujarat Secondary Education Tribunal at Ahmedabad in Application No.183 of 1983.

#. The facts of the case, in brief, are that the petitioner was convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced for life imprisonment by the Sessions Court, Godhara, under its judgment dated 30th December 1982 passed in Sessions Case No.109 of 1982. After the conviction of the petitioner for offence of murder, the respondents under the order dated 25th March 1983, dismissed him from services. This dismissal has been ordered of the petitioner from services by respondents No.1 and 2 after taking approval from the respondent No.3 vide its order dated 22nd February 1983. Dismissal was ordered with effect from 30th December 1982. Aggrieved by this order, the petitioner filed application No.183 of 1983 before the Secondary Education Tribunal and this has been decided by the Tribunal under the order dated 29th August 1983 impugned in this special civil application. The tribunal has held that dismissal of the writ petitioner is not valid but still in the facts of the case it has not considered it to be a fit case to interfere therewith. However, the application is partly allowed and it is ordered that the petitioner is entitled to receive salary from the date of conviction till 2.2.83, when District Education Officer passed the order giving permission to the proposed dismissal of the petitioner from services.

#. Before dealing with the matter on merits, I am constrained to observe that it is a case where the petitioner stated it to be a case of termination of his services. During the course of arguments, he stated it to be a case of his dismissal from services and in the order of the tribunal, I find that it is also taken to be a case of termination and at one or two places, as a case of removal.

#. The learned counsel for the petitioner contended that against the judgment of the Sessions Court, the petitioner preferred appeal in this court and so long as the appeal is pending the respondents No.1 and 2 and No.3 could not order for his dismissal from services. It has next been contended that even if it could have been ordered, then too, it could have been done only after giving notice and opportunity of hearing to him. Mr.Nanavati, during the course of arguments, accepts that though punishment could have been given but this notice was necessary to be given so that the petitioner would have had an opportunity to satisfy this authority that it is not a case for dismissal, but may be a case for termination or removal so that it may not have a bar in future employment. In support of his contention, he

placed reliance on two decisions of this Court, reference of which has been made in paragaph-8 of the special civil application. He further submits that the provisions of Section 36 of the Gujarat Secondary Education Act and the provisions of Regulation 27 of the Gujarat Secondary Education Regulation, 1974, are very clear and before passing any order of removal, dismissal or termination, a notice has to be given to the petitioner. Lastly, it is contended that the appeal filed by petitioner has been partly allowed by this court and his conviction under section 302 of the Indian Penal Code has been converted into conviction under Section 304 Part-II of the Indian Penal Code. In view of these fact, what Mr.Nanavati contends is that it is a fit case where the matter may be remanded back to the appointing authority to pass fresh order of penalty in accordance with law.

#. Mr.Mazgaonker, learned counsel for respondents No.1 and 2 contended that as per the provisions contained in Regulation 27(7G) of the Gujarat Secondary Education Regulations, 1974, in case of conviction of petitioner for moral turpitude, the only penalty is dismissal. It has next been contended that the petitioner was convicted for offence of murder and even if it is converted later on in to an offence under Section 304, Part-II of the Indian Penal Code, it continues to be an offence of moral turpitude and the dismissal of petitioner from services could have been made. The appeal is no doubt in continuation of the original proceedings, but conviction has not been stayed and the management has all the powers to dispense with the services of the petitioner on the ground of his conviction in a criminal case involving moral turpitude. As it is a case of dismissal on conviction under Section 302 of the Indian Penal Code, no opportunity of hearing needs to be given to him. Lastly, it is contended that even if it is taken that opportunity of hearing has to be given, then too, merely on this lapse on the part of the management, this court may not set aside the order and remand the matter back to the authority to pass fresh order as the petitioner has failed to make out any ground for taking different view in the matter. In support of this contention, he placed reliance on the decision of the apex court in the case of M.C.Mehta v. Union of India & Ors., reported in JT 1999 (5) SCC 114.

#. Having heard the learned counsel for the parties, I am satisfied that none of the contentions raised by learned counsel for the petitioner deserve acceptance.

#. Appeal may be continuation of the original

proceedings, but it is not a case where conviction of the petitioner ordered by the learned Sessions Judge, for the offence under Section 302 of the Indian Penal Code has been stayed by this court in appeal. Suspension of sentence may not amount to stay of conviction. Where conviction incurs disability or disqualification to continue as an employee of the respondents if the same is not stayed by the appellate court, it is always permissible to the respondents to dismiss such employee from the services. Mere pendency of appeal will not bar this action to be taken against the petitioner by respondents. Dismissal of petitioner has been made after taking prior approval of respondent No.3. So the first contention raised by learned counsel for the petitioner is devoid of any substance. The second contention raised by learned counsel for the petitioner though appears to be attractive, but if we go by the substance of the matter, it deserves no acceptance. On reading of provisions of Section 36 of the Gujarat Secondary Education Act and Regulation 27 of the Gujarat Secondary Regulations, 1974, I find that opportunity of hearing or notice may be necessary, though I am not deciding finally this issue, but merely on this omission on the part of respondents whether relief can be granted to the petitioner is a larger issue. Only on violation of principles of natural justice, the order impugned as a rule needs not to be quashed and set aside. In the case of M.C.Mehta v. Union of India (supra), it has been laid down by the apex court that mere violation of principles of natural justice in every case may not be a ground to grant relief to the petitioner. The learned counsel for the petitioner has initially contended that this notice has to be given only for the purpose of quantum of penalty whether dismissal, removal or termination, but when Mr.Mazgaonker has raised a doubt that in case this order is set aside, the petitioner will be entitled for all the backwages, Mr.Nanavati insisted that on quashing of this order, the petitioner shall be entitled for all the consequential benefits. This somersault taken by learned counsel for the petitioner is difficult to appreciate. Otherwise also, in such case, where principles of natural justice are not followed and on this ground if the court ultimately decides to give relief to the petitioner, he may not be entitled for all consequential benefits. In this respect, reference may have to the decision of the apex court in the case of State of Punjab v. Dr.Harbhajan Singh, reported in JT 1996(5) SC 404. Moreover, in such case, ultimately the punishment can only be dismissal, removal or termination. If the court is satisfied that this order has to be set aside only on this ground, there is no question of any

monetary benefits to be paid to the petitioner. So the apprehension raised by learned counsel for respondents No.1 and 2 is wholly devoid of any substance. The learned counsel for the petitioner has failed to show any mitigating circumstances or facts which justifies giving of the show cause notice to the petitioner. He only raised a broad contention but failed to show how in this case the penalty other than dismissal could have been given. Not only this, the learned counsel for the petitioner has failed to show that prejudice has been caused to the petitioner for this omission on the part of respondents No.1 and 2. On being asked by the Court also, the learned counsel for the petitioner has failed to show how the penalty other than dismissal could have been passed in this case. The petitioner has been convicted for the offence under Section 302 of the Indian Penal Code and on his conviction, this penalty could have been given and rightly it has been given. The appeal is filed but it is hardly of any substance and even if conviction has been ordered to be converted from Section 302 IPC to Section 304 Part-II, IPC, it is of no substance. The facts of this case are clear and dismissal could have been only appropriate punishment in this case which has been given. Only for the petitioner's satisfaction or that he has come up before this Court, when nothing substantial has been established, no relief can be granted only on this abstract violation of principles of natural justice. The substance of the matter has to be considered and when the court is satisfied that the breach of principles of natural justice made in passing of the impugned order does not cause any prejudice or otherwise result in putting to any loss to the petitioner, only on this ground, no interference can be made. This matter is squarely covered by decision of the apex court in the case of M.C.Mehta v. Union of India (supra). As a result of the aforesaid discussion, the tribunal has rightly not interfered with the punishment in this case though it found technical breach of provisions of Section 36 of the Gujarat Secondary Education Act, 1972. The tribunal has acted reasonably and fairly and to its decision, no exception can be made nor any interference can be made therein under Article 227 of the Constitution of India.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)